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Chambers of Vincent L. Briccetti

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AASIM MCPHEE,

Plaintiff,

v.

SGT. N. LAINO, Correctional Officer; STATE :
OF NEW YORK; and JOHN/JANE DOE 1-100, :
Defendants. :

ORDER

22 CV 10095 (VB)

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On April 4, 2023, defendant moved to dismiss the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). (Doc. #12).

On April 5, 2023, the Court issued an Order setting a deadline of May 4, 2023, for plaintiff, proceeding pro se and in forma pauperis, to oppose the motion. (Doc. #14).

On May 10, 2023, the Court received (i) a letter from plaintiff dated May 6, 2023, stating “enclosed [is] an Amendment to the Petition under 1983 before the Court, which I hope; better; states the facts of the assault by DOCCS staff” (Doc. #15); and (ii) an amended complaint dated May 6, 2023, which adds defendants the State of New York and John/Jane Doe 1-100. (Doc. #16).

District courts generally should grant a self-represented plaintiff an opportunity to amend a complaint to cure its defects unless amendment would be futile. See Hill v. Curcione, 657 F.3d 116, 123-24 (2d Cir. 2011); Salahuddin v. Cuomo, 861 F.2d 40, 42-43 (2d Cir. 1988).

Accordingly, it is hereby ORDERED that:

1. Because plaintiff seeks to amend the complaint to allege additional facts relevant to his claims and to add defendants, the Court GRANTS plaintiff’s request and will consider the amended complaint. See Fed. R. Civ. P. 15(a)(2) (“The court should freely give leave [to amend] when justice so requires.”).

2. Under Valentin v. Dinkins, a pro se litigant is entitled to assistance from the

district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). Accordingly, by **June 12, 2023**, pursuant to Valentin v. Dinkens, 121 F.3d at 76, defense counsel shall file a letter with the Court (i) identifying any other corrections officers referred to in the amended complaint; and (ii) providing addresses where any additional corrections officers may be served, or indicating whether defense counsel will accept service for these defendants.

3. In the interest of judicial efficiency, the time for all defendants to answer, move, or otherwise respond to the amended complaint is STAYED pending further Court Order.

4. In light of the amended complaint, defendant's motion to dismiss the complaint is TERMINATED AS MOOT. (Doc. #12). The Clerk is directed to terminate defendant's motion. (Id.).

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

Dated: May 11, 2023
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge